



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Application No. : 09/168,072 Confirmation No.: 2085

Applicant(s) : MARCHESANI, Nicholas P.

Filed : October 8, 1998

TC/A.U. : 3711

Examiner : William Pierce

Docket No. : 82022-0101

Customer No. : 24633

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OFFICE OF PETITIONS

**Mail Stop Petition**

Commissioner for Patents

P.O. Box 1450

Alexandria, Virginia 22313-1450

**P E T I T I O N T O R E V I V E**

Dear Sir:

Applicant, Nicholas P. Marchesani, through its undersigned attorneys, pursuant to 37 C.F.R. Section 1.137(b) and Section 711.03(c) of the Manual of Patent Examining Procedure, hereby petitions the U.S. Patent and Trademark Office ("PTO") to revive the above-referenced application for the "LOW/MAX CARD GAME METHOD AND APPARATUS" (Serial No. 09/168,072) (the "Application"). In accordance with the requirements of 37 C.F.R. § 1.137(b), this Petition includes: the required reply, including a Request for Continued Examination under 37 CFR 1.114, an Amendment in reply to the final Office Action mailed October 30, 2001, a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional, and the necessary Petition fee as set forth in 37 C.F.R. 1.17(m).

**STATEMENT**

Applicant, through his attorneys, hereby states that **the entire delay in filing the required reply from the due date for the reply up until the filing date of this grantable**

**petition was unintentional.** To assist the Commissioner in considering this Petition, Applicant hereby provides the following statements of facts demonstrating that all delay was unintentional and that Applicant is entitled to revival of this Application.

In response to an Office Action dated January 10, 2001, Applicant submitted a Continued Prosecution Application (“CPA”) and a Preliminary Amendment on September 10, 2001. In response to the CPA and Preliminary Amendment filed on September 10, 2001, the Examiner issued a Final Rejection dated October 30, 2001. In response to the Final Rejection, Applicant’s attorneys filed a second CPA application on April 30, 2002. On July 29, 2002, Applicant’s attorneys received a Notice of Improper Request for Continued Examination (“RCE”). This Notice indicated that (a) Applicant had failed to provide the required 37 CFR Section 1.114(c) submission and (b) that “submission No. 2 on paper #19 is unnecessary. Paper #17 does what No. 2 intended to.” Thus, the CPA request filed on April 30, 2002 was being treated by the Patent Office as an improper RCE request because the filed request did not include a response to the Examiner’s Office Action of October 30, 2001.

Based upon a telephone conversation with Examiner Pierce regarding the improper RCE request, it was Applicant’s attorney’s understanding that re-submission of the Preliminary Amendment that had accompanied the first CPA, and that had not been entered, would satisfy the requirements of 37 CFR 1.114(c) and put the RCE request in proper order. As such, Applicant’s attorneys re-submitted the Preliminary Amendment on September 9, 2002.

During a subsequent telephone conversation between Applicant’s attorneys and Examiner Pierce on September 27, 2002 the Examiner indicated that the rejection of the preliminary amendment as not complying with 37 CFR Section 1.114(c) did not originate from his department and that his previous advice had only been based on a limited familiarity with the procedures and requirements of the department that did generate the rejection. Thus, a Notice of Abandonment was mailed on October 1, 2002 stating that “submission of a copy of paper No. 17, [the preliminary amendment] which already received an action on the merits fails to meet the requirements for a submission under [37 CFR] 1.114.” Thus, contrary to the previous

conversation with Examiner Pierce, re-submission of the un-entered preliminary amendment was not considered to satisfy the requirements of 37 CFR 1.114(c). Accordingly, the Application was unintentionally abandoned through misunderstanding of the RCE procedures enacted shortly before the described events. In particular, Applicant's April 30, 2002 filing of a CPA was an inadvertent error because of a rule change for applications filed after May 29, 2000 requiring that an RCE be filed. Applicant's CPA could also not be considered a proper RCE because it did not include a communication responsive to the Final Rejection, but instead requested entry of the Preliminary Amendment.

Examiner Pierce advised that Applicant's attorneys could file a Petition to Revive the Application after receiving the Notice of Abandonment, and that the Petition should include a new RCE and a new Response to the October 30, 2001 Office Action in accord with 37 CFR 1.137.

**In view of the above sequence of events, the referenced patent application unintentionally became abandoned against the wishes of the Applicant.** Applicant's good faith submission of a CPA and the repeated communications by Applicant's attorneys with Examiner Pierce and submissions to the PTO as described above demonstrate that Applicant's failure to comply with 37 CFR Section 1.114(c) was unintentional and not in any way for purposes of delay.

Upon receiving the Notice of Abandonment, Applicant's attorneys attempted to contact the Applicant to report that the Application had inadvertently become abandoned and that a Petition to Revive and a Response to the October 30, 2001 Office Action would need to be prepared. These contacts were primarily attempted by telephone. Despite numerous attempts, Applicant's attorneys were unable to contact the Applicant. Due to the inability to reach the Applicant, Applicant's attorneys did not then prepare and submit a substantive Response to the October 30, 2001 Office Action as required to pursue revival of the Application under 37 CFR 1.137(a) or 1.137(b), as attorneys desired to hear from Applicant before doing so.

In late 2004, Applicant contacted the undersigned attorneys via telephone to inquire into the status of the Application and indicated that he had just become aware that the Application had become abandoned through an Internet search and had not been so previously aware. Applicant is an individual without an understanding of patent practice matters and the undersigned counsel was advised that he had had personal family matters that contributed to his not receiving messages from his attorneys; at one time he had been employing a different telephone number for receipt of telephone calls than that used by his attorneys and/or otherwise had been away from the residence at which his attorneys had attempted to contact him. At that time, Applicant advised that he desired to revive the Application and file a response to the Office Action, as he had never intended for it to become abandoned.

Thus, after Applicant's first learning of the Notice of Abandonment in late 2004 and Applicant communicating his desire to revive the Application and file a response to the Office Action, Applicant and the undersigned attorneys have diligently worked toward the preparation and filing of the present Petition to Revive. During this time, Applicant has diligently attempted to gather information from casinos using the game described in the Application. To date, a portion of this information has been received and is included in the Amendment filed concurrently with this Petition to Revive. Any delays between the Applicant first discovering the abandonment in late 2004 and his attorneys submitting the present Petition are directly related to Applicant and/or his attorneys carefully considering and preparing the present Petition to Revive and related substantive Response, and were not for purposes of delay. Despite the unintentional errors causing abandonment of the application, therefore, **Applicant has upon recognition of this unintentional abandonment diligently worked to file this grantable Petition for revival and has otherwise continuously pursued prosecution of this Application in an attempt to revive the application.**

In light of the foregoing remarks, Applicant therefore submits herewith this Petition, a small entity fee required to revive an unintentionally abandoned application pursuant to 37 C.F.R. Section 1.137(b), and RCE and Amendment in response to the Final Rejection of

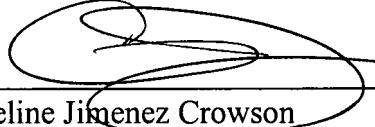
Application No.: 09/168,072  
Attorney Docket No. 82022-0101  
Petition to Revive dated February 1, 2005

October 30, 2001. Applicant respectfully requests that this Petition to Revive be granted. The Commissioner is hereby authorized to charge the appropriate fee amounts and any additional fees that may be required as indicated in the Request for Continued Examination concurrently filed with this Petition to Deposit Account No. 50-1349.

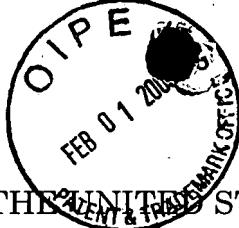
Respectfully submitted,

Dated: February 1, 2005

By: \_\_\_\_\_

  
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Attorney Docket No. 82022-0101

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of )  
Nicholas P. MARCHESANI ) Group Art Unit: 3711  
Serial No. 09/168,072 ) Examiner: W. Pierce  
Filed: October 8, 1998 )  
For: LOW/MAX CARD GAME )  
METHOD AND APPARATUS )  
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Amendment  
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Alexandria, VA 22314-1450

**AMENDMENT AFTER FINAL REJECTION**

Dear Sir:

In response to the Office Action dated October 30, 2001, for which a Petition to Revive and Request for Continued Examination ("RCE") are filed concurrently herewith, please amend the above-identified application as follows:

Amendments to the claims are reflected in the listing of claims, which begins on page 2 of this paper; and

Remarks/Arguments begin on page 12 of this paper.

**IN THE CLAIMS:**

Please replace all prior versions, and listings, of claims for the above identified-application with the following:

Claims 1-27 (Previously canceled).

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28. (Currently amended) A method of playing a card game, comprising the steps of:

providing a standard deck of cards;

having a dealer deal a set of cards to each of a plurality of players and to the dealer itself, an equal number of cards being dealt to each player, said equal number being from 3 to 7;

having each player make a single wager prior to viewing the face value of their respective cards;

having each player split their respective set of cards into two half-hands, by forming a first half-hand having a LOW value card combination and a second half-hand having a HIGH value card combination wherein the total number of cards in either half-hand does not exceed the total number of cards in the other half-hand by more than one card;

having the dealer split its set of cards into two half-hands, a first half-hand having a LOW value and a second half-hand having a HIGH value wherein the total number of cards in either half-hand does not exceed the total number of cards in the other half-hand by more than one card;

designating a player as a winner if both (a) that player's LOW hand is lower than the dealer's LOW hand and (b) that player's HIGH hand is higher than the dealer's HIGH hand.

29. (Previously presented) The method of claim 28, wherein each of said players and said dealer are dealt 4 cards, wherein each of said players may opt to discard one of said 4 dealt cards dealt to them and draw a replacement card upon the payment of a fee, and wherein said dealer can discard a card and draw a replacement card only if said 4 dealt cards dealt to said dealer meet a predetermined criteria.

30. (Previously presented) The method of claim 29, wherein said predetermined criteria comprises when at least 3 of said 4 dealt cards dealt to said dealer are equal in value and when at least 3 of said 4 dealt cards dealt to said dealer are one of a 6, 7, 8, or 9.

31. (Previously presented) The method of claim 28, wherein said step of having a dealer deal includes dealing 4 cards to each player and wherein said steps of splitting the player's and dealer's cards into half-hands includes making each half-hand with 2 cards.

32. (Previously presented) The method of claim 28, wherein said step of designating a player as a winner if both (a) that player's LOW hand is lower than the dealer's LOW hand and (b) that player's HIGH hand is higher than the dealer's HIGH hand is based on valuing aces as either 1 or 11, valuing 2's through 10's as 2 through 10, respectively, and valuing jacks, queens and kings as 10.

33. (Previously presented) The method of claim 28, wherein said step of designating a player as a winner if both (a) that player's LOW hand is lower than the dealer's LOW hand and (b) that player's HIGH hand is higher than the dealer's HIGH hand is based on poker values of the cards.

34. (Previously presented) The method of claim 28, wherein said step of designating a player as a winner if both (a) that player's LOW hand is lower than the dealer's LOW hand and (b) that player's HIGH hand is higher than the dealer's HIGH hand is based on valuing aces as 1, valuing 2's through 10's as 2 through 10, respectively, and valuing jacks as 11, queens as 12 and kings as 13.

35. (Previously presented) The method of claim 28, wherein, after placing said wagers and prior to splitting the dealt card into half-hands, a single replacement card can be purchased by any player upon the payment of a predetermined replacement fee and discarding one of said dealt cards, and wherein, prior to

splitting the dealer's dealt cards into half-hands, said dealer can draw a single replacement card under predefined conditions.

36. (Previously presented) The method of claim 35, wherein said replacement fee is 50% of the initial wager.

37. (Previously presented) The method of claim 28, further comprising, after said step of designating a player as a winner, the step of giving that player winnings in the amount of a 1 to 1 pay-out minus a commission fee.

38. (Previously presented) The method of claim 28, further comprising, the step of designating a player's hand as a push when either (a) one of the player's half-hands wins and the other of the player's half-hands loses; or (b) one of the player's half-hands wins and the other half-hand ties a non-losing half-hand of said dealer.

39. (Previously presented) The method of claim 28, further comprising, the step of designating a player's hand as a loser when either (a) both of the player's half-hands lose to respective half-hands of said dealer; or (b) one of the player's half-hands loses to a first corresponding half-hand of said dealer and the player's other half-hand ties a second corresponding half-hand of said dealer.

40. (Previously presented) The method of claim 28, wherein the players and dealer are dealt three cards.

41. (Previously presented) The method of claim 28, wherein the players and dealer are dealt four cards.

42. (Previously presented) The method of claim 41 further comprising the step of giving the player an award if the player is dealt a hand of four-of-a-kind.

43. (Previously presented) The method of claim 28, wherein the players and dealer are dealt five cards.

44. (Previously presented) The method of claim 28, wherein the players and dealer are dealt six cards.

45. (Previously presented) The method of claim 28, wherein the players and dealer are dealt seven cards.

46. (Previously presented) The method of claim 28, further including the step of allowing a player to bank a hand for a fee provided the banking player has enough money to pay 100% of all potentially winning wagers to all remaining non-banking players.

47. (Previously presented) The method of claim 28, further including the step of allowing a player to co-bank a hand with the dealer for a fee provided the banking player has enough money to pay 50% of all potentially winning wagers to all remaining non-banking players.

48. (Previously presented) The method of claim 28 further comprising, after the step of placing a wager and prior to the step of splitting the cards into half-hands, the step of each player and said dealer discarding a predetermined number of the dealt cards.

49. (Previously presented) The method of claim 48, wherein said predetermined number of the cards to be discarded is one card.

50. (Previously presented) The method of claim 48, wherein the said predetermined number of the cards is the amount of cards necessary to leave each said player and said dealer with 4 cards.

51. (Previously presented) The method of claim 48, wherein the dealer is dealt 4 cards and each player is dealt 7 cards and each player discards 3 cards prior to splitting the cards into half-hands.

52. (Previously presented) The method of claim 48, wherein each player and the dealer is dealt 7 cards and each discards 3 cards prior to splitting the cards into half-hands.

53. (Previously presented) The method of claim 48, wherein the dealer is dealt 4 cards and each player is dealt 6 cards and each player discards 2 cards prior to splitting the cards into half-hands.

54. (Previously presented) The method of claim 48, wherein each player and the dealer is dealt 6 cards and each discards 2 cards prior to splitting the cards into half-hands.

55. (Previously presented) The method of claim 48, wherein the dealer is dealt 4 cards and each player is dealt 5 cards and each player discards 1 card prior to splitting the cards into half-hands.

56. (Previously presented) The method of claim 48, wherein each player and the dealer is dealt 5 cards and each discards 1 card prior to splitting the cards into half-hands.

57. (Currently amended) A method of playing a card game, comprising the steps of:

providing a standard deck of cards;

having a dealer deal a set of cards to each of a plurality of players and to the dealer itself, an equal number of cards being dealt to each player, said equal number being from 6 to 7;

having each player make a single wager prior to viewing the face value of their respective cards;

having each player split their respective set of cards into two half-hands, by forming a first half-hand having a LOW value card combination and a second half-hand having a HIGH value card combination wherein the total number of cards in either half-hand does not exceed the total number of cards in the other half-hand by more than one card;

having the dealer split its set of cards into two half-hands, a first half-hand having a LOW value and a second half-hand having a HIGH value wherein the total number of cards in either half-hand does not exceed the total number of cards in the other half-hand by more than one card;

designating a player as a winner if both (a) that player's LOW hand is lower than the dealer's LOW hand and (b) that player's HIGH hand is higher than the dealer's HIGH hand.

58. (Previously presented) The method of claim 57, further comprising, after the step of placing a wager and prior to the step of splitting the cards into half-hands,

each player and said dealer discarding a number of the dealt cards necessary to leave each said player and said dealer with 4 cards.

59. (Previously presented) The method of claim 57, wherein said step of designating a player as a winner if both (a) that player's LOW hand is lower than the dealer's LOW hand and (b) that player's HIGH hand is higher than the dealer's HIGH hand is based on valuing aces as either 1 or 11, valuing 2's through 10's as 2 through 10, respectively, and valuing jacks, queens and kings as 10.

60. (Previously presented) The method of claim 57, wherein said step of designating a player as a winner if both (a) that player's LOW hand is lower than the dealer's LOW hand and (b) that player's HIGH hand is higher than the dealer's HIGH hand is based on poker values of the cards.

61. (Previously presented) The method of claim 57, wherein said step of designating a player as a winner if both (a) that player's LOW hand is lower than the dealer's LOW hand and (b) that player's HIGH hand is higher than the dealer's HIGH hand is based on valuing aces as 1, valuing 2's through 10's as 2 through 10, respectively, and valuing jacks as 11, queens as 12 and kings as 13.

62. (Previously presented) The method of claim 57, wherein each of said players may opt to discard one of said dealt cards dealt to them and draw a replacement

card upon the payment of a fee, and wherein said dealer can discard a card and draw a replacement card only if said cards dealt to said dealer meet a predetermined criteria.

**REMARKS**

Claims 28-62 are now pending. By this Amendment, claims 28 and 57 are amended. Reconsideration in view of the above amendments and following remarks is respectfully requested.

In the October 30, 2001 Office Action, claims 28, 31-34, 39, 40, 57, and 59-61 were rejected under 35 U.S.C. § 102(b) as being anticipated by Srichayaporn (U.S. Patent No. 6,135,453), Breeding (U.S. Patent No. 5,248,142), or Shen (U.S. Patent No. 4,659,087). Further, claims 29, 30, 35-38, 41, 43-56, 58, and 62 were rejected under 35 U.S.C. §103(a) as being unpatentable over Srichayaporn, Breeding, or Shen, in view of Malek, U.S. Patent No. 5,328,189.

**I. CLAIMS 28, 31-34, 39, 40, 57, and 59-61 DEFINE PATENTABLE SUBJECT MATTER PURSUANT TO 35 U.S.C. § 102**

The Office Action rejects claims 28, 31-34, 39, 40, 57, and 59-61 under 35 U.S.C. § 102(b) as being anticipated by Srichayaporn, Breeding, or Shen. The rejections are respectfully traversed.

Applicant's invention is generally directed to a game in which both the dealer and each player receives a set of cards and the players and dealer each split their cards into two half-hands, and the players make a wager.

In contrast, Srichayaporn discloses a complex version of traditional Pai Gow poker in which multiple wagers are made and multiple optional wagers are available. In Srichayaporn, players make a high-hand wager and a low-hand wager, and may make additional high-hand or low-hand wagers. Cards dealt to the

dealer and the players are separated into two split playing sets; in the disclosed four-card game version, the cards are divided into a high hand of two cards and a low hand of two cards (2,2); in the disclosed seven-card game version, the cards are split into a five-card high hand and a two-card low hand (5,2). High hands are played against high hands and low hands are played against low hands. Additionally, Srichayaporn is clearly described as a high/low poker game, thus limiting the scoring to a poker scheme.

Srichayaporn, requires each player to make a wager on their high hand and their low hand. That is, a minimum of two wagers are made by each player. Furthermore, each wager is played separately, one on each hand. Consequently, a person can win on one hand and lose on the other. This "dual betting" method of Srichayaporn alters game play and strategy, especially if unequal amounts are wagered on each split set.<sup>1</sup> Srichayaporn also provides for additional high and low hand wagering by the players, as well as by "backline" players that are not dealt cards. Thus, Srichayaporn discloses a highly complex version of high/low poker that includes multiple opportunities for wagering that increases the difficulty of the game, particularly for an inexperienced player. The multiple wagering aspect of the game also slows down the game as each player must decide how much to wager on

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<sup>1</sup> For example, a player could conceivably bet heavily on one half-hand while betting little or nothing on the other. A player in a game with 5,2 half-hands might place a much higher bet on the outcome of two-card half-hand and only bet the minimum on the five-card half-hand. Betting this way enables the player to select the best two cards for the two-card half-hand from the seven cards dealt. This strategy enhances odds of winning the two-card half-hand and thereby offset any loss on the five-card half-hand.

each high hand and each low hand, as well as determine whether or not to make additional wagers and how much those wagers should be. Allowing back-line players to also make wager further increases the time necessary to complete all betting as the back-line players must also make a determination of whether to make a wager and if so how much to wager. Thus, Srichayaporn discloses a time consuming game that slows down the excitement for the players, as well as slows the operations of the casino operating an embodiment of the Srichayaporn game.

The present invention differs from that of Srichayaporn. For example, claims 28 and 57 recite that a single wager is made. Further, claims 28 and 57 recite that a player is designated a winner when that player's low hand is lower than the dealer's low hand and high hand is higher than the dealer's high hand.

Claim 28 also recites that the dealer and each player receives an equal number of 3 to 7 cards. Claim 57 recites that the dealer and each player receives an equal number of 6 to 7 cards. Claims 28 and 57 both recite that each player's cards are split into two "half-hands" not differing in number of cards by more than one card. In contrast, Srichayaporn only teaches a seven-card game using 5,2 card configuration of split sets. The current invention's seven-card game does not employ 5,2 card split sets. As claimed, the current invention's seven-card game provides only four possible half-hand combinations. The first is 4,3 half-hands. The second is 3,3 half-hands after a single card is discarded. The third is 3,2 half-hands after two cards are discarded. The fourth is 2,2 half-hands after three cards are discarded.

In the presently claimed invention, "half-hands" are specifically limited in the number of cards they can contain such that the total number of cards in either half-hand does not exceed the total number of cards in the other half-hand by more than one. In other words, the difference in the number of cards in each half-hand is no greater than one. Thus, the current invention does not involve 5,2, 4,2 or 3,1 half-hands of cards. Thus, based on the above discussion, there are significant differences in game play between the seven-card versions of the current invention and the game taught by Srichayaporn.<sup>2</sup>

Thus, it is respectfully submitted that Srichayaporn fails to disclose or teach the features of independent claims 28 or 57. Therefore, withdrawal of the rejection of claims 28 and 57 under 35 U.S.C. §102 is respectfully requested. Further, dependent claims 31-34, 39, and 40 depend from claim 28, and dependent claims 59-61 depend from claim 57 and are thus distinguishable over Srichayaporn for at least the reasons described in connection with claims 28 and 57 above.

Breeding discloses a wagering game that includes an additional wager-resolving outcome specifically related to a procedure of the game. Essentially, Breeding describes an additional betting opportunity based on the random selection

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<sup>2</sup> For example, in two of the seven-card versions of the current invention the player must contemplate and strategize for a three-card half-hand. In Srichayaporn's seven-card game there is never a three-card half-hand, rather the player must contemplate and strategize for a five-card half-hand (which is equivalent to playing regular five-card poker) and a two-card half-hand. Furthermore, no version of the seven-card versions of the current invention requires the player to contemplate or strategize for a five-card half-hand.

of the first player to be dealt cards. The present invention in no way includes such additional wagering.

Breeding also discloses the traditional game of Pai Gow poker wherein each of the players is dealt seven cards. The seven cards are then divided by each player into two split sets, one having five cards and the other having two cards. For a player to win a wager based on their cards, each split set must outrank those of the dealer. For a player to lose a wager based on their cards, each split set must be outranked by those of the dealer. A push is gained with one split set outranking the dealer and one split set being outranked by the dealer.

Further, prior to beginning a game of Pai Gow, the selection of the player to receive cards first is resolved randomly. Breeding simply provides for an additional wager to be made on the outcome of the random selection of the first player to receive cards. Breeding discloses a game where each player is assigned a unique symbol, such as a number from 1-7. Each player is then allowed to place a wager corresponding to the unique symbols. A device then randomly selects one of the unique symbols to determine the player to receive cards first and the additional wager is resolved by paying those players selecting the unique symbol that was randomly selected.

In addition to the wagering associated with the selection of the unique symbol, Breeding describes the traditional game of Pai Gow, which does not disclose splitting cards into two half-hands according to the present invention. Nor does Breeding teach or suggest any variation of this dealing and playing methodology.

As described above and recited in claims 28 and 57, the current invention provides a single wager and a game in which half-hands are formed in manner in which the number of cards in each half-hand does not differ in number by more than one card. Thus, nowhere does Breeding disclose or teach a card based game as described above and claimed in the application of the present invention.

Thus, it is respectfully submitted that Breeding fails to disclose or teach the features of claims 28 or 57. Therefore, withdrawal of the rejection of claims 28 and 57 under 35 U.S.C. §102 with regard to Breeding is respectfully requested. Further, dependent claims 31-34, 39, and 40 depend from claim 28, and claims 59-61 depend from claim 57 and are distinguishable over Breeding for at least the reasons described in connection with claims 28 and 57 above.

Shen et al. is also directed toward a Pai Gow type card game. In Shen et al., four cards are dealt to each player and divided according to a player's own strategy into two split sets of two cards (2,2). The object is to create the two highest value two-card half-hands within the scoring rules. In order for a player to win, both of the player's half-hands must be higher than the dealer's two half-hands. A player loses if both half-hands are lower than the dealer's half-hands. Finally, the hand is a push if a player wins one half-hand and loses the other.

Shen et al. utilizes a modified blackjack scoring system and a poker tie breaker system. Cards are valued and added together according to blackjack rules. Once added, however, the "tens" digit is ignored for values above nine; only the ones digit is considered. For example, any two cards totaling 18 would equal 8.

Thus an 18 would lose to both of a half-hand of a 5 and a 4 (totaling 9) as well as a half-hand of a 10 and a 9 (totaling 19). However, a face card (valued at 10) and a 9 (or an ace and 8) trumps a 5 and a 4 even though both equal 9. Additionally, pairs of cards beat any set of added cards; a pair of 2s beats a King and a 9. If the dealer and player have the same half-hand, the dealer wins.

As described above and recited in claim 28, the present invention is played with 3 to 7 cards. Shen et al. only teaches game play with four cards and does not provide any suggestion to modify this number. The scoring systems of the games differ as well. Further, as discussed above and recited in claims 28 and 57, according to the present invention, a winner is declared when a player's low hand is lower than the dealer's hand and that player's high hand is also higher than the dealer's high hand. Shen et al. requires a player to create two high value hands from the cards dealt. Additionally, the current invention does not involve ignoring the tens digit of the totaled half-hand values, thus creating an added complexity that slows the game as players calculate their potential hands.

Thus, it is respectfully submitted that Shen et al. fails to disclose or teach the features of claims 28 or 57. Therefore, withdrawal of the rejection of claims 28 and 57 under 35 U.S.C. §102 with regard to Breeding is respectfully requested. Further, dependent claims 31-34, 39, and 40 depend from claim 28, and claims 59-61 depend from claim 57 and are distinguishable over Breeding for at least the reasons described in connection with claims 28 and 57 above.

In view of the foregoing, withdrawal of the rejection of claims 28, 31-34, 39, 40, 57, and 59-61 under 35 U.S.C. §102 in view of Srichayaporn, Breeding, and/or Shen is respectfully requested.

**II. CLAIMS 29, 30, 35-38, 41, 43-56, 58, and 62 DEFINE PATENTABLE SUBJECT MATTER PURSUANT TO 35 U.S.C. § 103**

The Office Action also rejects claims 29, 30, 35-38, 41, 43-56, 58, and 62 pursuant to 35 U.S.C. §103 as being unpatentable over Srichayaporn, Breeding, or Shen in view of Malek.

Malek discloses a complex game in which a game of Twenty-one and a game of Baccarat are played simultaneously. Malek also provides for three separate betting opportunities. The third bet allows a player to obtain an additional card that is played (i.e., summed) with the preexisting cards in both the game of Twenty-one and the game of Baccarat. The game provided in Malek is also played with a maximum of 5 cards.

Malek fails to supply the deficiencies of Srichayaporn and, as a result, the combination of Srichayaporn in view of Malek does not provide the invention of claims 28 and 57. As stated by the Office Action, Srichayaporn “is silent to the provisions of buying a replacement card.” Furthermore, considering the number of wagering options already included in the Srichayaporn reference, combining this reference with Malek to allow additional purchasing of cards to the already numerous opportunities in Srichayaporn to wager actually teaches away from the simplified, fast moving, and easy to understand approach of the present invention.

Furthermore, as Malek merely discloses the addition of another card to be played with the preexisting cards and does not contemplate a “replacement” card, the combination of Srichayaporn and Malek does not teach the claimed invention. Furthermore, neither Srichayaporn nor Malek contains the requisite motivation to combine and/or modify their teachings to arrive at the claimed invention. Therefore, withdrawal of the rejection of claims 29, 30, 35-38, 41, 43-56, 58, and 62 under 35 U.S.C. §103 is respectfully requested.

Additionally, as discussed above, it is respectfully submitted that Malek fails to supply the deficiencies of Breeding and, as a result, the combination of Breeding in view of Malek does not provide the invention of claims 28 and 57. Furthermore, neither Breeding nor Malek contains the requisite motivation to combine and/or modify their teachings to arrive at the claimed invention. Therefore, withdrawal of the rejection of claims 29, 30, 35-38, 41, 43-56, 58, and 62 under 35 U.S.C. §103 with respect to Breeding is respectfully requested.

For at least the foregoing reasons it is also respectfully submitted that Malek fails to supply the deficiencies of Shen et al. and, as a result, the combination of Shen et al. in view of Malek does not provide the invention of claims 28 and 57. Furthermore, neither Shen et al. nor Malek contains the requisite motivation to combine and/or modify their teachings to arrive at the claimed invention. Therefore, withdrawal of the rejection of claims 29, 30, 35-38, 41, 43-56, 58, and 62 under 35 U.S.C. §103 with respect to Shen et al. is respectfully requested.

The Office Action also rejects claim 42 pursuant to 35 U.S.C. §103 as being unpatentable over Srichayaporn, in view of Malek and Banyai.

Banyai discloses another complex poker game in which a bonus is paid to losing players holding predetermined card combinations. In contrast, the present invention provides for an award to a player dealt a four-of-a-kind, whether the hand is a winning hand or a losing hand. As provided above, the present invention is neither taught nor suggested by the combination of Srichayaporn in view of Malek. Nor does the addition of a bonus payment to a losing player teach or suggest the present invention. Banyai fails to supply the deficiencies of Srichayaporn and Malek and, as a result, the combination of Srichayaporn in view of Malek and Banyai does not provide the present invention of claim 42. Furthermore, neither Srichayaporn, Malek, nor Banyai contains the requisite motivation to combine and/or modify their teachings to arrive at the claimed invention. Accordingly, withdrawal of the rejection of claim 42 under 35 U.S.C. §103 with respect to Srichayaporn, in view of Malek and Banyai is respectfully requested.

### **III. "WINNING SCHEME" IS NEW AND UNOBlVIOUS**

In further response to the Office Action, the Applicant respectfully asserts that a "winning scheme" substantially defines and differentiates any game, new or old, and especially card games. As such, changing a card game's winning strategy defines a new game as opposed to merely redefining an old game. The winning scheme of the present invention clearly provides a fast passed game allowing players of all levels to easily participate, the excitement level to remain high, as

well as quick processing of the game and wagers by the casino. As can be seen in the attached copies of two Mohegan Sun instruction cards for an embodiment of the present invention, the game is clearly advertised as "a fast action game," "easy to play," and "fun for everyone." Each of these aspects is disclosed or inherent in the specification of the present invention. Players and casino operators benefit from the winning scheme of the present invention in ways not provided for in the prior art cited in the Office Action. Accordingly, Applicant asserts that these aspects are not available in the prior art and further support that the present invention is new and unobvious.

**CONCLUSION**

For foregoing reasons, it is respectfully requested that the above new claims be entered, and that the analysis that accompanied the rejections set forth in the previous Office Actions regarding the now cancelled claims be reconsidered. The Applicant believes all claims are allowable over the art of record, and the application is therefore submitted to be in condition for immediate allowance.

Favorable reconsideration of this application and a timely Notice of Allowance are respectfully requested.

Respectfully submitted,

Dated: February 1, 2005      By: \_\_\_\_\_

  
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## Low-Max® Poker Style

Low Max is a  
4 card High Low  
Game, with Draws.

This fast action  
Poker game is  
easy to play and  
fun for everyone.

### Bets

Each player must place a bet in their betting circle before the dealer calls "no more bets".

### Bonus Bet

A bonus payout will be offered for any four-of-a-kind. This bonus will be a side wager for each player to bet in a designated bonus wagering area. Bonus wagers are extra wagers, and are not included in the player's first bet. A player is not required to wager the bonus bet. If a player chooses to place a bonus wager he/she must place the bonus wager at the beginning of the round and before any initial cards are dealt to a player.

### Dealing

Each player and the dealer will be dealt four cards face down first. Now the players can pick-up their hands and begin to play.

### Object

The object is to make two poker hands consisting of two cards each. Low Max is a high low poker game, so the two highest cards or any pair should be used for the high half and the lowest cards (not pairs), for the low half.

### Drawing

Each player will be given a chance to buy one replacement card to try and improve their hand. Draws can be taken on your turn only and will cost an additional 20% of your first bet (\$1.00 for every \$5.00 bet). After drawing or passing your hand must be set face down, two cards in the low box and two cards in the high box.

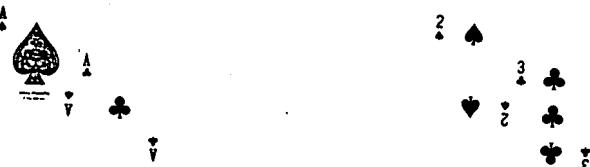
### Winning and Losing

Both high and low must win against the dealer. Your high half must be a higher poker hand than the dealer's high. And your low must be a lower poker hand than the dealer's low. Hands that are equal or tie the dealer's hands are called copy hands. The bank wins all the copy hands.

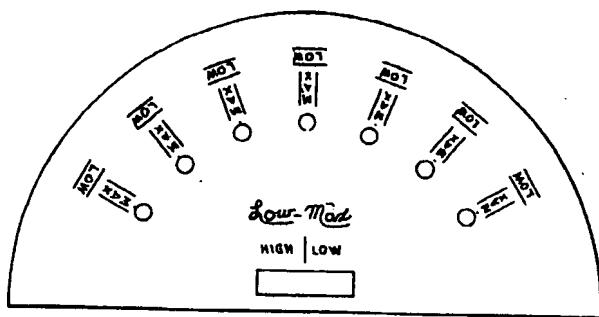
### Player's Banking

Players may take the bank one time for every dealer's one bank. Banker's must have enough to cover all bets in action. Banker's will be charged a 5% commission on all winnings.





## Low-Max® Poker Style



LOW MAX IS A 4 CARD HIGH/LOW DRAW POKER GAME. THIS FAST ACTION POKER GAME IS EASY TO PLAY AND FUN FOR EVERYONE. BONUS WAGERS CAN BE PLACED FOR 4 CARD POKER HANDS PAYOUTS.

### LOW MAX - POKER STYLE

#### BETS

EACH PLAYER MUST PLACE A BET IN THEIR BETTING CIRCLE BEFORE THE DEALER CALLS "NO MORE BETS".

#### DEALING

EACH PLAYER AND THE DEALER WILL BE DEALT FOUR CARDS FACE DOWN FIRST. NOW THE PLAYER'S CAN PICK UP THEIR HANDS AND BEGIN TO PLAY.

#### OBJECT

THE OBJECT IS TO MAKE TWO POKER HANDS CONSISTING OF TWO CARDS EACH. LOW MAX IS A HIGH LOW POKER GAME, SO THE TWO HIGHEST CARDS OR ANY PAIR SHOULD BE USED FOR THE HIGH HALF, AND THE TWO LOWEST CARDS (NOT PAIRS), FOR THE LOW HALF.

#### DRAWING

EACH PLAYER WILL BE GIVEN A CHANCE TO BUY ONE REPLACEMENT CARD TO TRY AND IMPROVE THEIR HAND. DRAWS CAN BE TAKEN ON YOUR TURN ONLY AND WILL COST AN ADDITIONAL 20% OF YOUR FIRST BET (\$1.00 FOR EVERY \$5.00 BET). AFTER DRAWING OR PASSING YOUR HAND MUST BE SET FACE DOWN, TWO CARDS IN THE LOW BOX AND TWO CARDS IN THE HIGH BOX.

#### WINNING AND LOSING

BOTH HIGH AND LOW MUST WIN AGAINST THE DEALER. YOUR HIGH HALF MUST BE A HIGHER POKER HAND THAN THE DEALER'S HIGH. AND YOUR LOW MUST BE A LOWER POKER HAND THAN THE DEALER'S LOW. HALVES THAT ARE EQUAL OR TIE THE DEALER'S ARE CALLED COPY HANDS. THE BANK WINS ALL COPY HALVES AND HANDS.

#### PLAYER'S BANKING

PLAYER'S MAY TAKE THE BANK ONE TIME FOR EVERY DEALER'S ONE BANK. BANKER'S MUST HAVE ENOUGH TO COVER ALL BETS IN ACTION. BANKER'S WILL BE CHARGED A 5% COMMISSION ON ALL Winnings.

#### BONUS

THE BONUS WAGER IS A SIDE BET FOR HAVING A 4 CARD POKER HAND OF: 4 OF A KIND, 3 OF A KIND, 2 PAIR OR 1 PAIR.

\* GAMBLING PROBLEM? CALL 1-800-GAMBLER.  
BET WITH YOUR HEAD, NOT OVER IT.